



SUSSEX COUNTY COUNCIL

AGENDAS & MINUTES

SUSSEX COUNTY COUNCIL - GEORGETOWN, DELAWARE, DECEMBER 4, 2007

**Call to
Order**

A regularly scheduled meeting of the Sussex County Council was held on Tuesday, December 4, 2007 at 10:00 a.m., in the Council Chambers, Sussex County Administrative Office Building, Georgetown, Delaware, with the following present:

Dale R. Dukes	President
Finley B. Jones, Jr.	Vice President
George B. Cole	Member
Vance Phillips	Member
Lynn J. Rogers	Member
David Baker	County Administrator
Susan M. Webb	Finance Director
Hal Godwin	Assistant to the County Administrator
James D. Griffin	County Attorney

**M 711 07
Amend
and
Approve
Agenda**

A Motion was made by Mr. Phillips, seconded by Mr. Jones, to amend the Agenda by deleting "Approval of Minutes" and to approve the Agenda, as amended.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
Mr. Rogers, Yea; Mr. Jones, Yea;
Mr. Dukes, Yea**

**Corre-
spondence**

Mr. Griffin read the following correspondence:

RICHARD SPENCER, FRANKFORD, DELAWARE.

RE: Letter commending Sussex County field engineers and McGinn Construction for their work during the recent sewer construction in his neighborhood.

**Interim
Financial
Report**

Mr. Baker presented an unaudited Interim Financial Report for the period July 1, 2007 through October 31, 2007. Mr. Baker noted that the Report was prepared by Gina Jennings, Director of Accounting, and Susan Webb, Finance Director.

Mr. Baker stated that the Report covers only the General Fund Revenues and Expenditures and Capital Improvement Revenues and Expenditures and he highlighted major items:

**Interim
Financial
Report
(continued)**

- **\$11.4 million has been collected in property taxes.**
- **Realty Transfer Tax is up 17.44 percent compared to budget. (Realty Transfer Tax is the County's largest non-sewer and water revenue – it is difficult to determine what the final amount will be – it was conservatively budgeted and will continue to be monitored closely.)**
- **In the General Fund Budget, \$18.2 million was budgeted and in the Capital Improvements Budget, \$4.2 million was budgeted, for a total of \$22.4 million. Compared to the pro-rated budget amount, this amount is up 17 percent compared to budget; however, the amount is down about 15 percent compared to the previous year.**
- **Monies collected through the Mobile Home Placement Fee is given to the local libraries. This amount is down 26 percent compared to budget.**
- **Recorder of Deeds fees are down 1 percent.**
- **Register of Wills fees are up 54 percent.**
- **Sheriff's fees are up 13 percent.**
- **1/4 percent of building permit fees go to individual fire companies; this amount is down 8.8 percent.**
- **Building permit zoning fees are down 10 percent. The number of building permits for new homes is down 13 percent, according to the latest weekly numbers.**
- **Building inspection fees are down 20 percent.**
- **Interest earnings are down 24 percent (there are some timing differences and it is believed that the budget will be met).**
- **In total, on the revenue side, revenues are up 15 percent and are on track relative to the budget, with some over and under amounts.**
- **On the expenditures side, most of the departments are under budget; however, the annual one-time pension contribution has not yet been made; it will be made in late December. Total Expenditures are down approximately 17 percent; however, they are on track relative to the budget, with some over and under amounts.**
- **Capital Project expenditures include funds for the Emergency Operations Center, the purchase of property at the airport and industrial park, runway expenditures and the purchase of property in Cinderberry for a paramedic building.**

Mr. Baker noted that steps have been taken to monitor spending.

Mrs. Webb reminded the Council to consider the timing differences when reviewing the report. She asked the Council if they would like to receive a monthly financial report to review or if they would like one to be presented quarterly at a Council meeting.

The Council requested that a report be mailed to them monthly and a quarterly report be presented at a Council meeting.

**Delaware
Ag Lands
Preservation
Foundation
Request
Delaware
Ag Lands
Preservation
Foundation
Request
(continued)**

Mr. Baker presented a request for information from the Delaware Agriculture Lands Preservation Foundation for preserving farmland. The Foundation is requesting Council's decision on an approximate amount of funds that the County will commit this Fiscal Year to purchase development rights from Sussex County farmers. At a later date, the Foundation will provide a list of the individual properties for a final decision. In the past, the County has contributed over \$2 million towards the protection of 2,471 acres of farmland, specifically through this program. In the Foundation's 2008 proposal, they have indicated that County funds would be matched by the State and possibly by Federal funds as well.

Mr. Baker reported that the County budgeted \$1,390,381 for open space land grants in this year's Budget, which included \$300,000 designated for the purchase of the Farmland Preservation easements and \$1,090,381 for open space (10% as required by ordinance). Mr. Baker advised that the Sussex County Land Trust Board has requested that \$150,000 out of the \$1,909,381 be designated for Farmland Preservation easements over and above the \$300,000; the Land Trust has agreed that they will match \$150,000 from private contributions.

Mr. Baker summarized by offering the initial proposed funding level:

County funds designated for farmland preservation easements	\$300,000
County open space funds (requested by the Land Trust)	150,000
Sussex County Land Trust funds	<u>150,000</u>
Total	\$600,000

Based on estimates from the Delaware Agriculture Preservation Foundation, this \$600,000 would be matched by the State of Delaware and the Federal government equally, providing a total of \$1,800,000 for the purchase of farmland preservation easements.

Mr. Baker noted that any decision by the Council "would not lock the County in"; it would only be for the purpose of getting an idea of what funding would be available from the County and Land Trust. Mr. Baker stated that the Council could make an amount contingent on the County's financial position.

The Council expressed concern about the economy and discussed the fact that, even though the money has been budgeted, the budget may have to be revised based on the County's financial position.

It was the consensus of the Council that the Delaware Agriculture Lands Preservation Foundation be advised that the Council has funds budgeted;

however, the County cannot commit until the County's financial position in the next few months is considered.

**Public
Hearing
Public
Hearing/
Ordinance
Amending
Budget/
Angola
Neck
SSD/
Woods
on
Herring
Creek**

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE AMENDING THE ANNUAL OPERATING BUDGET FOR FISCAL YEAR 2008 TO INCORPORATE PROJECTED REVENUES AND EXPENDITURES FROM THE ANGOLA NECK SANITARY SEWER DISTRICT – WOODS ON HERRING CREEK".

The purpose of the Proposed Ordinance is to incorporate projected revenues and expenses from the Angola Neck Sanitary Sewer District (ANSSD) – Woods on Herring Creek (WOHC) project. The WOHC is located in the ANSSD, where the County will be constructing a new sewer system in the next three years. It is currently served by a small diameter gravity collection system and community drain field. The drain field is currently failing and excess wastewater must be siphoned off and trucked to the County's Inland Bays treatment facility. Mrs. Webb stated that the County needs to amend the 2008 Operating Budget to include the interim rates for this project.

Mrs. Webb announced that, when the Proposed Ordinance was advertised, on the accompanying Exhibit A, brackets and underlines were incorrectly placed around the revenues and expense items. A correct Exhibit A was distributed for review.

Public comments were heard.

Phyllis Kane, a resident of the Woods on Herring Creek, spoke in support of the project. She also asked that the County proceed with a RFP as soon as possible to have the wastewater piped to a neighboring facility since their drain fields are a problem and could impact the environment.

There were no additional public comments and the Public Hearing was closed.

**M 712 07
Amend
Proposed
Ordinance
Amending
Operating
Budget**

A Motion was made by Mr. Jones, seconded by Mr. Rogers, that the Sussex County Council amends the Proposed Ordinance to amend the Annual Operating Budget for Fiscal Year 2008 to incorporate projected revenues and expenditures from the Angola Neck Sewer District – Woods on Herring Creek, by amending Exhibit A to the Proposed Ordinance to place brackets around all of the total revenues and expense items that make up total projected revenues and expenditures of \$33,101,058 and to insert underlining under all of the total revenues and expense items that make up total projected revenues and expenditures of \$33,236,395.

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
Mr. Rogers, Yea; Mr. Jones, Yea;

Mr. Dukes, Yea

M 713 07
Adopt
Ordinance
M 713 07
Adopt
Ordinance
No. 1942
(continued)

A Motion was made by Mr. Cole, seconded by Mr. Jones, to Adopt Ordinance No. 1942 entitled “AN ORDINANCE AMENDING THE ANNUAL OPERATING BUDGET FOR FISCAL YEAR 2008 TO INCORPORATE PROJECTED REVENUES AND EXPENDITURES FROM THE ANGOLA NECK SANITARY SEWER DISTRICT – WOODS ON HERRING CREEK”, in its amended form, with the correct deleted figures and totals indicated with brackets and the correct projected revenues and expenses indicated with underlining.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
Mr. Rogers, Yea; Mr. Jones, Yea;
Mr. Dukes, Yea**

Public
Hearing
Assessment
Roll/
Angola
Neck
SSD/
Woods on
Herring
Creek

A Public Hearing was held on the Assessment Roll for the Angola Neck Sanitary Sewer District – Woods on Herring Creek.

Mr. Baker stated that the Assessment Roll is a record of the front footage and EDUs per property for the Woods on Herring Creek, for the period January 1, 2008 through June 30, 2008. He noted that the record has been filed and available in the Sussex County Utility Billing Division for inspection by the public.

There were no public comments and the Public Hearing was closed.

M 714 07
Adopt
Assessment
Roll/
Angola
Neck
SSD/
Woods on
Herring
Creek

A Motion was made by Mr. Cole, seconded by Mr. Rogers, based on the recommendation of the County Engineer and the County Finance Director, that the Sussex County Council hereby adopts the Assessment Roll for the Angola Neck Sanitary Sewer District, for the period January 1, 2008 to June 30, 2008.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
Mr. Rogers, Yea; Mr. Jones, Yea;
Mr. Dukes, Yea**

Industrial
Park
Sublease

Jim Hickin, Director of Sussex County Airport and Industrial Park, advised the Council that Michael and Ethan Rhodes (owners of Builders Supply of Delmarva), tenants at the Industrial Park, are asking for the Council’s consent to lease one of their warehouse buildings and part of their office building to McCabe’s Mechanical Services, Inc. who design and fabricate stainless steel and aluminum products for the poultry industry. Mr. Hickin stated that, because this is a different use than the lease currently allows, the master lease needs to be amended.

**M 715 07
Approve
Industrial
Park
Sublease
M 715 07
(continued)**

A Motion was made by Mr. Rogers, seconded by Mr. Jones, that the Sussex County Council approves the use of Lot 21 at the Sussex County Industrial Airpark by Michael D. Rhodes and Ethan M. Rhodes for the design and fabrication of stainless steel and aluminum products for the poultry industry and consents to Michael D. Rhodes and Ethan M. Rhodes entering into a commercial lease agreement with McCabe's Mechanical Services, Inc. subject to Michael D. Rhodes' and Ethan M. Rhodes' compliance with their existing lease with Sussex County, dated November 1, 2004.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
Mr. Rogers, Yea; Mr. Jones, Yea;
Mr. Dukes, Yea**

**Miller
Creek
SSD
Update**

Brad Hawkes, Director of Utility Engineering, updated the Council on the construction of the Miller Creek Sanitary Sewer District, which began on February 2007 and he reported that Phase A has been completed and work has begun on Phase B.

**M 716 07
Grant
Substantial
Completion/
Miller
Creek
SSD/
Phase A**

A Motion was made by Mr. Jones, seconded by Mr. Phillips, based upon the recommendation of the Engineering Consultants, Whitman, Requardt and Associates, LLP, and the County Engineering Department, that the Sussex County Council grants Substantial Completion, effective November 14, 2007 for Sussex County Contract No. 06-01A, Miller Creek Sanitary Sewer District to Edward McGinn General Contractors, Inc., and that final payment be made any held retainage be released in accordance with the terms and conditions of the contract documents.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
Mr. Rogers, Yea; Mr. Jones, Yea;
Mr. Dukes, Yea**

**Adminis-
trator's
Report**

Mr. Baker read the following information in his Administrator's Report:

**1. November 28, 2007, Preliminary Land Use Service (PLUS)
Committee Meeting**

On November 28, County staff attended a meeting and heard initial oral comments from various State agencies, including the State Planning Office, regarding the County's Land Use Plan Update draft. A written report must be submitted to the County within 20 days summarizing their comments.

A number of concerns were expressed by State staff. Several State agencies expressed displeasure about the base zoning density in AR-1 areas within Level 4. Other comments were made regarding issues

that have been and continue to be addressed by the County Council. Attached is a handout noting some of the concerns expressed by the State and providing some information regarding County services.

Adminis-
trator's
Report
(continued)

The County Planning and Zoning Commission will be reviewing the written comments when received from the PLUS Committee, as well as other input, and make a recommendation to the County Council after a public hearing.

2. Annual Mildred King Christmas Luncheon

County offices will be closed on December 4, 2007, from 11:30 a.m. to 1:30 p.m. for County employees to attend the annual Mildred King Christmas Luncheon.

3. Register of Wills Information Booklet

Attached is an information booklet prepared by the Register of Wills Office. There is information regarding what a will is, out-of-state wills, jointly held property, trusts, gifts, estates, etc. The booklet is available in the Register of Wills Office at 855-7875. It will soon be available on the County website at www.sussexcountyde.gov under the Register of Wills Office.

Land
Use
Plan
Update

Mr. Baker distributed and reviewed a hand-out regarding the Land Use Plan Update, which is based on oral comments heard during the November 28th meeting with the State; there is no written record or tape of that meeting. Mr. Baker reported that there were very few positive remarks made about County accomplishments and that he believes the County should be given credit for the many positive things that the County Council and County government have done. Mr. Baker stated that some of these things are in the Plan and needed to be noted: housing accomplishments, transportation/mobility, open space and purchase of development rights, other County assistance that compliment State services, wastewater, community design, and economic development. Mr. Baker noted that this is just a response to some of the comments made at the PLUS meeting. He stated that the County will continue to work with the State to improve the Plan.

Public
Hearing/
Proposed
Ordinance/
Charges
and
Rates/
Angola
Neck

A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE ESTABLISHING ANNUAL SERVICE CHARGES, ANNUAL ASSESSMENT RATES FOR TRANSMISSION AND/OR TREATMENT AND SEPTIC INSTALLATION CHARGES FOR ANGOLA NECK SANITARY SEWER DISTRICT – WOODS ON HERRING CREEK".

Mrs. Webb presented information on the service charge, assessment, and septic installation rates and she noted that these rates are only temporary

**SSD/
Woods
on
Herring
Creek
Public
Hearing
(continued)**

and are only for the Woods on Herring Creek. The proposed rates are as follows:

- **Annual Service Charge - \$898.78 per EDU per year (to be pro-rated at \$449.39 for six months). These rates are only in effect for January 1, 2008 through June 30, 2008 – the current budget year.**
- **Annual Assessment Charge/Transmission Fee - \$2.21 per front foot.**
- **One-Time Septic Installation Fee - \$475.00 per vacant lot, where needed.**
- **System Connection Charge – Not due until connection to County Treatment Facility is made (\$3,375 per EDU).**

There were no public comments and the Public Hearing was closed.

**M 717 07
Adopt
Ordinance
No. 1943
Ordinance
Establishing
Rates and
Charges/
Angola
Neck SSD/
Woods on
Herring
Creek**

A Motion was made by Mr. Cole, seconded by Mr. Rogers, to Adopt Ordinance No. 1943 entitled “AN ORDINANCE ESTABLISHING ANNUAL SERVICE CHARGES, ANNUAL ASSESSMENT RATES FOR TRANSMISSION AND/OR TREATMENT AND SEPTIC INSTALLATION CHARGES FOR ANGOLA NECK SANITARY SEWER DISTRICT – WOODS ON HERRING CREEK”, effective January 1, 2008.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
Mr. Rogers, Yea; Mr. Jones, Yea;
Mr. Dukes, Yea**

Mrs. Webb presented grant requests for the Council’s consideration.

**M 718 07
Council-
manic
Grant**

A Motion was made by Mr. Phillips, seconded by Mr. Jones, to give \$500.00 from Mr. Dukes’ Councilmanic Grant Account to the Town of Blades for the Annual Kids Christmas Bazaar.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
Mr. Rogers, Yea; Mr. Jones, Yea;
Mr. Dukes, Yea**

**M 719 07
Community
Improve-
ment
Grant**

A Motion was made by Mr. Cole, seconded by Mr. Phillips, to give \$5,000.00 from Mr. Cole’s Community Investment Grant Account to West Side New Beginnings for their Youth Program.

Motion Adopted: 5 Yeas.

**Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
Mr. Rogers, Yea; Mr. Jones, Yea;
Mr. Dukes, Yea**

M 720 07 Youth Activity Grant **A Motion was made by Mr. Phillips, seconded by Mr. Rogers, to give \$200.00 (\$100.00 each from Mr. Dukes' and Mr. Phillips' Youth Activity Grant Accounts) to East Coast Explosion Softball Team for tournament costs, uniforms and equipment.**

M 720 07 (continued) **Motion Adopted: 5 Yeas.**

**Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
Mr. Rogers, Yea; Mr. Jones, Yea;
Mr. Dukes, Yea**

Introduction of Proposed Ordinance **Mr. Phillips introduced the Proposed Ordinance entitled "AN ORDINANCE TO GRANT A CONDITIONAL USE OF LAND IN AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT FOR ANTIQUES, GIFTS AND PRODUCE AND BARBEQUE SALES TO BE LOCATED ON A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 1.0 ACRE, MORE OR LESS" (Conditional Use No. 1778) filed on behalf of Timothy Elder. The Proposed Ordinance will be advertised for Public Hearing.**

Introduction of Proposed Ordinance **Mr. Rogers introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 4.711 ACRES, MORE OR LESS" (Change of Zone No. 1639) filed on behalf of Todd Bariglio. The Proposed Ordinance will be advertised for Public Hearing.**

Introduction of Proposed Ordinance **Mr. Rogers introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM A MR MEDIUM DENSITY RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN LEWES AND REHOBOTH HUNDRED, SUSSEX COUNTY, CONTAINING 11.481 ACRES, MORE OR LESS" (Change of Zone No. 1640) filed on behalf of Todd Bariglio. The Proposed Ordinance will be advertised for Public Hearing.**

Introduction of Proposed Ordinance **Mr. Phillips introduced the Proposed Ordinance entitled "AN ORDINANCE TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A B-1 NEIGHBORHOOD BUSINESS DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN BALTIMORE HUNDRED, SUSSEX COUNTY, CONTAINING 3.02 ACRES, MORE OR LESS" (Change of Zone No. 1641) filed on behalf of Thomas E. Frank. The Proposed Ordinance will be advertised for Public Hearing.**

Introduction **Mr. Jones introduced the Proposed Ordinance entitled "AN ORDINANCE**

of Proposed Ordinance **TO AMEND THE COMPREHENSIVE ZONING MAP OF SUSSEX COUNTY FROM AN AR-1 AGRICULTURAL RESIDENTIAL DISTRICT TO A CR-1 COMMERCIAL RESIDENTIAL DISTRICT FOR A CERTAIN PARCEL OF LAND LYING AND BEING IN GEORGETOWN HUNDRED, SUSSEX COUNTY, CONTAINING 2.647 ACRES, MORE OR LESS"**
(continued) **(Change of Zone No. 1642) filed on behalf of Georgetown Auto Sales. The Proposed Ordinance will be advertised for Public Hearing.**

Presentation by VFW for Uplink Program **George Ritchie of the Oak Orchard VFW Mason Dixon Post 7234 in Ocean View presented a Certificate and a Plaque to the Council in appreciation of the Council's continued support and contributions to the VFW Uplink Program, a program that provides phone cards for servicemen.**

Public Hearing/ Proposed Ordinance Relating to Forested and/or Landscaped Buffers **A Public Hearing was held on the Proposed Ordinance entitled "AN ORDINANCE TO AMEND CHAPTER 99, ARTICLES I, III, IV AND VI OF THE CODE OF SUSSEX COUNTY RELATING TO FORESTED AND/OR LANDSCAPED BUFFERS, SITE PLANS AND BONDING REQUIREMENTS AND TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, ARTICLE III TO ADD A PROVISION ALLOWING COUNCIL TO REQUIRE A FORESTED AND/OR LANDSCAPED BUFFER FOR CONDITIONAL USES AND RESIDENTIAL PLANNED COMMUNITIES OF SINGLE-FAMILY OR MULTI-FAMILY DWELLINGS".**

SYNOPSIS: The buffer requirements contained in Sections 99-5 and 99-16 of the existing Subdivision Ordinance have previously been interpreted to apply only when certain types of agricultural uses set forth in Section 115-20.B(1) exist and/or only when a subdivider proposed residential lots immediately adjacent to those agricultural uses. This amendment clarifies that, except in defined limited circumstances, the buffer is required everywhere that the subdivision is adjacent to lands of other ownership whether or not those lands are used for agricultural purposes. It also specifies that the forested buffer areas cannot contain any stormwater management facilities, wastewater treatment and/or disposal areas, water treatment facilities, streets, buildings or other surface improvement. This amendment requires the Final Site Plan to contain an approval signature of the Sussex Conservation District to confirm that agency's review and approval of the location, dimensions and type of stormwater management and erosion and sedimentation control facilities proposed to be constructed. It also requires the establishment of the buffer to be included among the items of work covered by the performance bond. Finally, it allows Council to impose the forested and/or landscaped buffer requirement on approvals for developments consisting of conditional uses and/or RPCs for single and multi-family dwellings in all districts where they are permitted with Council approval.

The Planning and Zoning Commission held a Public Hearing on this application on November 29, 2007 at which time the Commission recommended that the Ordinance be approved.

Lawrence Lank, Director of Planning and Zoning, read a summary of the Commission's Public Hearing. The summary was admitted as part of the Council's record. (See the minutes of the meeting of the Planning and Zoning Commission dated November 29, 2007.)

**Public
Hearing/
Proposed
Ordinance
Relating to
Forested
and/or
Landscaped
Buffers
(continued)**

Mr. Lank reported that the Planning and Zoning Commission received a letter from Mabel Granke relating to the Proposed Ordinance which referenced that there does not seem, as written, to be provisions for existing forested buffers; that mature trees already in place should not be destroyed; questioning what is the definition of "landscaped"; that the Proposed Ordinance indicates trees of a certain size with provisions for temporary ground cover; questioning why the title of the ordinance refers only to a forested buffer; that forested buffers should protect all neighboring properties including agriculture; that allowing a period of 18 months to provide a forested buffer is too long; that it would seem that as soon as possible would help stabilize the area; that inclusion of requiring maintenance by both the developer and any subsequent homeowners association is essential and must be retained; that there should be verification of a review by the State Forester; that since there is a requirement that a landscaped architect must design the site plan, that verification should also be included; and that the ordinance amendment should be corrected if necessary and the ordinance should be on the books and enforced as soon as possible.

Mr. Lank reported that correspondence (by email) was received from Bryan Hall of the Office of State Planning Coordination, dated November 7, 2007, which referenced five considerations:

- suggesting a 60/40 tree ratio to allow for a greater mix of evergreen to address structural screening issues as opposed to just an open agricultural field**
- suggesting that, if a developer's intent is to use existing trees on the site, then they should develop a tree preservation plan and it should be tied to the proposed bonding of the project with a clause that states, if these trees fall within the first 18 months, then the bond monies may be used for maintenance and removal of trees from the landscape**
- not recommending the use of wood chips for the whole site; mulching is okay; however, the use of chips over the whole site is subject to cause long-term soil problems and result in failure of the plantings**
- recommending that all plantings be done in accordance with ANSI 300(A) planting standards, i.e. recognize national standards for uniformity**
- adding to the qualified person listing, a certified arborist and a licensed forester – these persons can do a job just as well as a licensed landscape architect**
- allowing for a clause that addresses disease and insect problems that may impact the site**

- consider a plating list to insure species diversity and planting of acceptable non-invasive plant species

Public
Hearing/
Proposed
Ordinance
Relating to
Forested
and/or
Landscaped
Buffers
(continued)

Mr. Dukes stated that the ordinance refers to a buffer being on every boundary of any major subdivision (entire perimeter) and he questioned if it would be required around a golf course along the road frontage. Mr. Lank suggested that the Proposed Ordinance could be amended to state that only a landscaped buffer would be required along the road frontage. Mr. Dukes stated that he believes the Proposed Ordinance is an overkill of buffers.

Mr. Cole stated that the Proposed Ordinance should exempt golf courses and other large-scale passive amenity packages. He also stated that, many times, the back of the homes are seen from the roadways and this buffer would curtail this problem. He noted that all subdivision should be treated the same.

Mr. Phillips asked that Council be provided with a copy of the ANSI 300(A) document referenced by Bryan Hall.

Mr. Rogers referenced Page 1, the second “WHEREAS” and he stated that the words “every boundary” should be changed to “every perimeter boundary”. He also referenced Page 2 regarding the definition for a Forested and/or Landscaped Buffer Strip and he stated that walking paths should be allowed through a buffer area. In the same section, he referenced the inclusion of the word “streets”. He noted that in Sections “I” and “J” on Pages 3 and 4 of the Proposed Ordinance, “I” states that buffers are not required in those portions of the subdivision perimeter which represent the width of a right-of-way connector road or street...” and “J” states that “the landscape plan shall avoid placing planted trees or allowing existing trees to remain in the areas adjacent to entrances into and exits from the development...” Mr. Rogers stated that these items contradict each other.

Mr. Cole asked Mr. Griffin to review and clarify the “street” issue.

Mr. Rogers referenced Page 4, Section D, regarding “four or more lots that is adjacent to agricultural farmland...” and he questioned if the four lots do not butt up to agricultural lands, do they still have to install the 30 foot buffer. Mr. Rogers questioned a reference in the Proposed Ordinance to a homeowners association being required when four lots are created. Mr. Rogers also referred to Page 3, Section H, of the document which states that “The perpetual maintenance plan shall include a requirement that the forested buffer area be planted and maintained according to best management practices in the forestry industry.”. Mr. Rogers stated that the County is not in the timber business and he questioned if “visual buffer” should not be substituted for “forestry industry”.

Mr. Griffin stated that the State Forester will be asked to give input and a

forested buffer typically means trees (deciduous and evergreen) and this is the reason this statement was included in the document. Mr. Griffin noted that the Proposed Ordinance could be modified by including the ANSI planting standards, referenced by Bryan Hall.

Public
Hearing/
Proposed
Ordinance
Relating to
Forested
and/or
Landscaped
Buffers
(continued)

Mr. Jones expressed concern about requiring a buffer around an entire outer perimeter and he questioned buffer requirements for 4-lot subdivisions. Mr. Lank stated that requests for waivers are accepted.

Mr. Jones also questioned the 18-month buffer requirement. Mr. Lank responded that the County currently uses the time period of 18 months for bonding methods.

Public comments were heard.

Dan Kramer referenced (1) the wording on Page 2 - “four or more lots adjacent to agriculture farmland” and he stated that the words “agriculture farmland” is proposed to be removed. Mr. Kramer also referenced the wording on Page 4 - “of four (4) or more lots that is adjacent to agricultural farmland of other ownership” where the words “other ownership” is proposed to be removed. Mr. Kramer stated that this is contradictory.

Ken Christenbury of Axiom Engineering questioned if the proposal would apply if the agricultural use is occurring on a non-agriculturally zoned property. He stated that the ordinance amendment is for the protection of agricultural lands and that this would burden the owners of non-agricultural lands who may want to subdivide in the future. He asked if Council would consider placing this ordinance amendment only on agriculturally zoned land and not agricultural uses, since there are agricultural uses on every kind of zoning that exists in the County. Mr. Christenbury also asked that, if there is an existing forested buffer, he does not believe there is a need for certification by a professional.

Kevin McBride of Morris & Ritchie Associates, Inc. stated that the Proposed Ordinance references a forested buffer on every perimeter boundary and every subdivision and that he does not support a 30 foot buffer along all roads. He stated that he would like the Council to seriously consider exempting road frontage. He questioned if the reference to “every subdivision” means subdivisions adjacent to agricultural uses. Mr. McBride stated that the reference to any subdivision would create a hardship and result in a loss of density for small parcels that have a greater percentage of perimeter than a larger tract. He referenced the term “Ag purposes” which is further defined in Section 115-20 B (1-5) and he stated that these definitions would virtually include any AR-1 zoned lands since the uses are very broad. He stated that, in the past, the Planning and Zoning Commission has interpreted the buffering as being required only along open, cleared, cultivated or grazing lands of an active farm operation. Mr. McBride stated that the proposal also calls for a buffer between open spaces, wastewater treatment, amenities such as pools and basketball

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courts, etc. and that he does not think that “pure” open space should be included. Mr. McBride referred to the reference to “disposal facilities” and stated that it should be clarified to allow the inclusion of the disposal fields if they are already forested and intended to be used for spray or drip irrigation. Mr. McBride referenced Page 2, first sentence, “exclusive of any residential lot” and he stated that this should be revised to exclude lots greater than 3/4 acres, since these larger lots can accommodate the buffer in the rear yard without encumbering the uses associated with the lot. Mr. McBride referenced Page 3, Section F, and stated that it should be revised as “buffers shall be installed within 18 months from the date site work in each phase of construction is authorized to commence” since buffers should be commensurate with construction.

Mr. McBride stated that he would put his comments in writing and submit them to Lawrence Lank, Director of Planning and Zoning.

Preston Dyer of Ocean View stated that it is his understanding that this ordinance was clarifying and adding to the provisions of the existing ordinance that relate to subdivisions that adjoin agricultural properties.

Mr. Griffin stated that the draft of this ordinance did not anticipate and include a requirement that the buffer be on every boundary of the perimeter. Mr. Griffin stated that a discussion of the original draft ordinance was that it would be difficult for the Council to differentiate, i.e. how could the County require one property owner to buffer a boundary and then, when an adjoining farm is developed, give the developer of the farm a waiver. As a result of this discussion, Mr. Griffin stated that he was directed to amend the draft ordinance to include the entire perimeter except where it would interfere with sight lines for traffic, where there are connector streets, stormwater, etc.

Mr. Dyer questioned what triggered the ordinance amendment and what is the purpose of the ordinance amendment. He stated that the County already has a buffer ordinance for agricultural uses. He questioned why the County is taking a buffer that is intended for agricultural use and applying it carte blanche to everything – every subdivision. He stated that he would understand if it was only being applied when there is an agricultural use next to a project – a subdivision, a conditional use, an RPC, a rezoning. He stated that if Council wishes to extend agricultural protection to conditional uses or change of zones that are adjacent to active agricultural uses, then that can be done and should be limited to only those boundaries that are adjacent to existing agricultural uses as defined in the Code. Mr. Dyer suggested that the Council revisit the Cluster Ordinance and clearly define the intent of the 30 foot buffer; in that Ordinance, the County has the ability to require a fence, a berm, etc. He questioned the preference of a buffer of trees without leaves during the winter. Mr. Dyer stated that it would be wrong to tell developers how to buffer and landscape the front of a development along the roadway. He also stated that protecting specific uses or enhancing the County’s roadscapes are worthy of Council’s

consideration of improving the current Zoning Code.

Mr. Phillips stated that his support of roadway buffering is for shielding the public's view shed from vinyl siding.

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(continued)

Mr. Cole stated that, in regards to buffering open space, open space with trees would be okay; however, open space such as stormwater management and open space near a boundary should have a buffer.

Mr. Dyer stated that a cluster subdivision is different than a straight subdivision and the Council needs to go back to each individual process and put in that process what it wants to achieve – there should be no blanket approach – landscape buffers differ as to application.

Mr. Dyer concluded by pointing out that the Proposed Ordinance is written “in the shall”.

Mr. Dyer was asked to provide a written copy of his comments to the Council.

There were no additional public comments and the Public Hearing was closed.

M 721 07
Defer
Action on
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A Motion was made by Mr. Cole, seconded by Mr. Phillips, to defer action on the Proposed Ordinance entitled “AN ORDINANCE TO AMEND CHAPTER 99, ARTICLES I, III, IV AND VI OF THE CODE OF SUSSEX COUNTY RELATING TO FORESTED AND/OR LANDSCAPED BUFFERS, SITE PLANS AND BONDING REQUIREMENTS AND TO AMEND CHAPTER 115 OF THE CODE OF SUSSEX COUNTY, ARTICLE III TO ADD A PROVISION ALLOWING COUNCIL TO REQUIRE A FORESTED AND/OR LANDSCAPED BUFFER FOR CONDITIONAL USES AND RESIDENTIAL PLANNED COMMUNITIES OF SINGLE-FAMILY OR MULTI-FAMILY DWELLINGS” and to leave the public record open (no time period was established).

Motion Adopted: 5 Yeas.

Vote by Roll Call: Mr. Cole, Yea; Mr. Phillips, Yea;
Mr. Rogers, Yea; Mr. Jones, Yea;
Mr. Dukes, Yea

Remove
Items
from
Agenda

It was the consensus of the Council to remove the following items from the Agenda: Old Business: “AN ORDINANCE TO AMEND SECTION 115-160 OF THE CODE OF SUSSEX COUNTY WITH RESPECT TO ILLEGAL SIGNS” and Executive Session – Land Acquisition. These items will be placed on the December 11th Agenda.

M 722 07
Adjourn

A Motion was made by Mr. Phillips, seconded by Mr. Jones, to adjourn at 12:08 p.m. Motion Adopted by Voice Vote.

Luncheon Councilmembers and County employees attended the Annual Mildred King Luncheon at the CHEER Center in Georgetown.

Respectfully submitted,

**Robin A. Griffith
Clerk of the Council**